CASE AND COMMENT

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In This Issue

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A Lawyer's Frequent Clients Are Widows in Distress

EVERY lawyer has among his clients widows who turn to him for advice and comfort. Sometimes the advice concerns business as distinguished from legal counsel. But, more often, it concerns distributive rights, dower, and the protection of her children's interests. Perhaps no phase of legal work pays so well in terms of personal satisfaction. Certainly, in no other work, is the lawyer more admired, respected and trusted.

Here there is vital need for an ANNOTATED STATE STATUTE. We offer ANNOTATED LAWS OF MASSACHUSETTS as the work most likely to be used in answering the widows' call for help.

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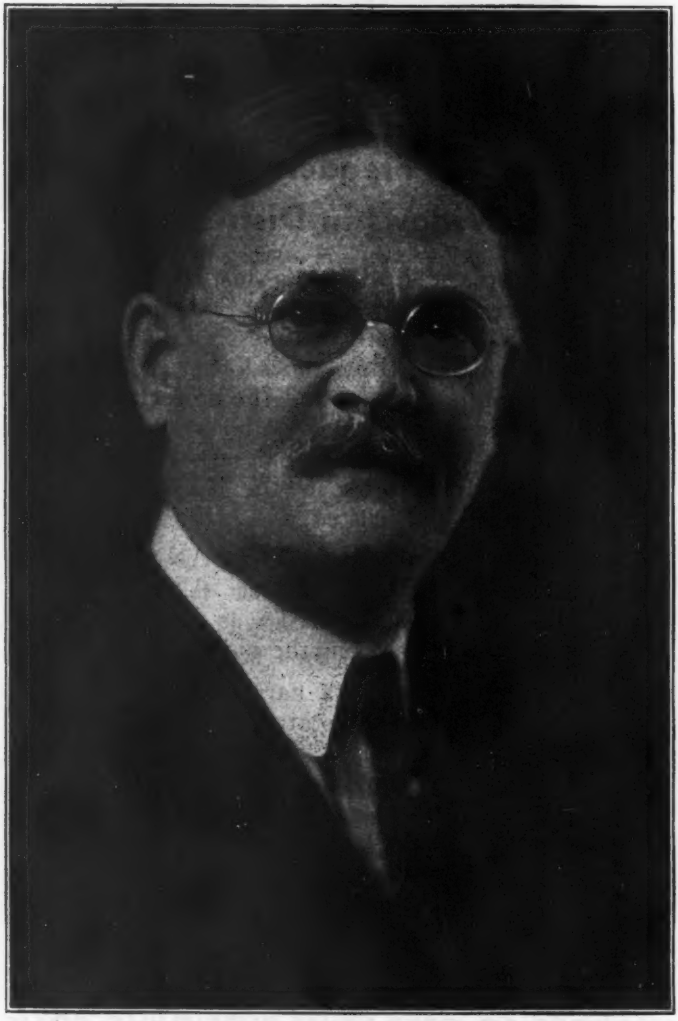

DEAN ROSCOE POUND

The Thought and Work of Roscoe Pound

JUSTICE HENRY T. LUMMUS*

(Condensed from Tulane Law Review, December 1936)

WHEN the Autocrat of the Breakfast Table pointed out that where two men converse there are in truth six men present, he could not have had in mind in that restricted enumeration such a one as Roscoe Pound, who was to be born some dozen years later. Not that Pound would add any imaginary or delusive personages to Dr. Holmes' list; he is too clear-headed for that. But limiting ourselves to real persons, it is difficult to think of Pound as a single human entity. In widely separated fields of human knowledge, the learned claim him as one of themselves. He is philosopher, botanist, linguist, historian of Freemasonry, as well as lawyer, judge, teacher and legal scholar. It is these latter Pounds to whom I invite your attention.

He was born in the capital of a State almost in the geographical centre of the country. It was and is a typically American State, democratic in both theory and practice, with a society less settled and stratified than that in the States on the Eastern seaboard and in the South. When he was born, Nebraska was still a pioneer State, recently admitted to statehood, and all through his youth and young manhood he was familiar with the problems peculiar to new and growing communities. His father was for many years a trial judge, and his sister rivals the subject of this sketch in the space devoted to her in Who's Who in America. To his early life in Nebraska may doubtless be traced his explanation of American legal phenomena as the consequences of the spirits of the Puritan and the pioneer.

After college and the Harvard Law School, he was admitted to the Nebraska bar when just twenty years old, and practiced at Lincoln for about ten years. Exactly at the turn of the century, he became, by the unanimous appointment of the judges of the Supreme Court of Nebraska, one of the commissioners of that court for two years, to assist that court in disposing of its arrears of business, under a scheme apparently borrowed from the system of vice-chancellors in England and New Jersey. Three commissioners heard a case in banc and submitted an opinion written by one of them. If that opinion was accepted by the court, it stood as the opinion of the court. The work was in all respects that of an appellate court of last resort, except that approval of the result had to be obtained. As he himself said he "did the work of a judge, without the prerogatives and the glory attaching to that more eminent position." He compared himself to the negro butler who asked time off to go to a meeting of his lodge. "The lodge can get along without you, Sam," he was told. "You're not the master, are you?" "No, sah, I ain't the master," Sam replied, "I'se only the Supreme King; there's seven above me yet." That reminds one of a Supreme Court with a Court of Appeals above it.

Dean Pound tells many good stories of the bench and bar of Nebraska in his day, and he is no mean raconteur. One of his stories concerns the lawyer who admitted arguing bad law at times, but insisted that when he "hollered," what he said was law. Any skeptic who doubts the fervency of the arguments addressed to the courts of Nebraska in his day may look at State v. Scheve, 65 Neb. 853, 91 N.

* Associate Justice of the Supreme Judicial Court of Massachusetts. This paper was read at a dinner in honor of Dean Roscoe Pound given at New Orleans, October 31st, 1936.

W. 846 (1902), relating to the reading of the Bible in schools, and State v. Nebraska Home Co., 66 Neb. 349, 92 N. W. 763, 60 L.R.A. 448, 103 Am. St. Rep. 706 (1902), dealing with a land lottery.

In attributing the past growth of the law to the courts, we may possibly do less than justice to the teacher of law. Blackstone as a judge long ago passed into oblivion; Blackstone as Vinerian professor of law at Oxford, the author of the famous Commentaries, became the corner stone of legal learning in America for more than a century, and still has to be reckoned with. The influence of Kent and Story as judges, great as it was and is, looks small compared with the influence that they exerted through their teachings and their books which in large measure were the results of their teachings.

But whatever may have been the situation in the more remote past, it is certain that when Roscoe Pound abandoned the bench for the lecture hall and legal literature, he chose the wider sphere of usefulness. A judge of an appellate court is never wholly free to express himself. His subject is set for him by the case to be decided and by the printed record upon which the case comes up.

Considerations of both time and space keep a judge from the research and the resultant exposition that would bring him real satisfaction. The moment he is satisfied that the right result is in sight, he must deny himself the pleasure of tracing some principle to its beginnings and working out all its consequences, for other opinions wait to be written in never ending succession.

Much less frequently than could his predecessors in the formative period of a century ago, can he feel justified in burdening the reports with an exposition of the law. Brevity is the order of the day. A modern judge, as Holmes said, "has to try to strike the jugular and let the rest go." The busy practitioner of law is in no better plight. Research and reflection are pleasures too expensive to be indulged in by the leaders of the profession, with clients clamoring for every moment of their time.

For these reasons, leadership in the development of the law has definitely passed from the courts to the law schools and to the law magazines that are largely the products of the schools. We are growing nearer to Continental thought in this respect. It is the day of the Professor.

To the high calling of a teacher of the law, and to its literature, Roscoe Pound has devoted the last thirty years and more. He went from Nebraska to Northwestern, thence to Chicago, and thence to Harvard in 1910, becoming Story professor of law. Twenty years ago he became Dean of the Harvard Law School.

Pound's legal writings began with a humorous trifle published in the Green Bag for April, 1896, entitled "Dogs and the Law," in which he recommended the publication of a work of at least two volumes to be entitled "Commentaries on Canine Jurisprudence." His next publication, I believe, was a collection of legal sources published in 1904, which had a second edition in 1913 and a third in 1927 bearing the title, "Readings on the History and System of the Common Law." This was the first tangible fruit of his teaching which began in 1899. Everyone who grubs in law libraries knows how easy it is to find the pinnacles and finials, the cornices and gargoyles, of the legal edifice, and how hard to uncover the foundation stones. This book brings many of the fundamentals home to the student in convenient form.

A flood of literature from his pen followed. He has written no treatises on particular topics in the law, but has confined himself for the most part to

broad subjects which touch statecraft as well as strictly private law. But his books, articles, lectures, addresses and book reviews are almost innumerable. To try to list them would consume the time at my disposal, and would leave you amazed that so much could be done by one man whose time was already claimed by duties so urgent and so exhausting as his have been. He has by no means confined himself to Anglo-American law, for he is deeply learned in the Roman law and in its modifications that prevail in Continental Europe. Like the great jurist who gave his name to the first professorship that Pound held in the Harvard Law School, he is much interested in comparative law, and has written at least two articles on the subject, the first of which was published in the Tulane Law Review. I know an able trial lawyer in Boston who had an important commercial case that, as he realized although his opponent did not, depended upon German law. After much study, he convinced himself that the German law was entirely in his favor.

The next thing was to find someone in Boston who could qualify as an expert witness on German law. He discovered a lawyer who had studied the civil law in Germany in his youth, and had had plenty of time to forget it. With much effort the trial lawyer poured his ideas of German law into his home made expert, and then, timing the occasion skilfully so that his opponent would have only one night to prepare a reply, qualified his expert successfully and had him pour the same ideas into the court. But the opponent was not in so bad a box as he appeared to be. He had the wit to hasten across the Charles River that evening to see Dean Pound. The next morning he presented the Dean as an expert witness. The Dean demonstrated to the satisfaction of everybody, including the trial lawyer in question, that the latter had been misled in his study of German law. The Dean recognized that the mistake was natural, and pointed out how it had been made. He showed the court just how and when the question had been settled, what jurists participated in the discussion, and what each said. It was a triumphant demonstration of the breadth and accuracy of his learning. Dean Pound has lectured in the University of Leiden, as well as at Cambridge, Munich and Rome. He is a Foreign Fellow of the Royal Society of Naples, an Honorary Member of the Royal Academy of Palermo, and President of the American Academy of Arts and Sciences. He has written legal articles in French, German and Italian. Besides numerous American honorary degrees, he has received the degree of J.U.D.—Doctor of Civil and Canon Law—from the University of Berlin, and the degree of Doctor of Laws from Cambridge. His gown, hood and hat emblematic of this last degree are well worth seeing. They would perhaps be more fitting for academic honors from Bologna, or, better still, Naples, for they are as gorgeous as a sunset over Procida and Ischia.

What has struck me most forcibly in reading what Dean Pound has written, is that he is a thoroughly practical man. Law deals constantly with human nature, and one who would succeed as a jurist, a law-giver or a legal reformer must know human nature as well as he knows the law. I fail to find a thought or recommendation in a line of Dean Pound's writings that could not be translated into action with advantage to the law and to the community. His theory, so far as I have discovered, is all practical; it will work.

The Breakfast Theory of Jurisprudence

By WILLARD L. KING*

(Reprinted from Chicago Bar Record November, 1936)

YOUR librarian has tried to find escape from political oratory and the summer's heat by rereading Warren's "History of the Supreme Court of the United States."

Since that work appeared in 1923, our Supreme Court has passed through one of the most eventful periods of its history. The Minnesota Moratorium case, the Gold Clause case, the Railroad Pension case, and the N. R. A. and A. A. A. cases have thrown a bright light of publicity upon its work.

One theory that is dinned into the public mind by the current newspapers and magazines, and even by some college professors, is that a study of the politics and personality—yes, even of the comparative personal wealth—of the judges who now sit upon that court is of more importance in predicting their decisions than an examination of the Constitution or of the law governing its interpretation.

This has been called "the breakfast theory of jurisprudence," as though momentous decisions were dependent upon what a judge ate at breakfast. A Freudian touch frequently appears in such analyses of the judge's character. In reply someone has suggested that if this theory prevails, the time may come when Twiss's story of Lord Eldon's senile laughter on seeing his servant girls strive not to show their legs as they descended the ladders during the fire at his castle may, in years to come, be cited on a parity with his judicial opinions.

We hear much of the Baptist parsonage as the background of the Chief Justice's judicial opinions or of the Oriental cast of Judge Cardozo's thought. We hear of "ultra capitalistic leanings," "the predominance of Republicans upon the federal bench;" we hear of liberal judges and conservative judges. We hear that the process of judicial interpretation of the Constitution is legislative rather than judicial, and that expert economists would be better fitted than lawyers to perform it. But we hear little or nothing of the Constitution which is being interpreted or of the great body of constitutional doctrines by which such interpretations are made.

Warren's "History of the Supreme Court" is an excellent antidote for this mis-emphasis. From it, a devastating brief could be written in opposition to the "breakfast theory." The decisions of men appointed to that bench for political reasons have been a crushing disappointment to their sponsors. The court has been violently nonpartisan, unless one counts partisanship for the Constitution as a fault. Many times its decisions have thwarted the cherished designs of the President who appointed the judge rendering the decision. Many judges have concurred in decisions permitting action contrary to their own deepest political philosophy.

In 1804, at the height of his controversy with the court, Jefferson had his first opportunity to fill a vacancy. Gallatin wrote the President, "The importance of filling this vacancy with a Republican and a man of sufficient talents to be useful is obvious." Jefferson appointed William Johnson, a stalwart Republican.

A few years later, in Jefferson's great battle to enforce the Embargo Act over the fighting protest of the New England States, he instructed the collectors of all ports to detain *all* vessels loaded with provisions regardless of their alleged destination. It was then Mr. Justice Johnson who issued a mandamus to the collector of the

* Of the Chicago Bar.

port of Charleston to allow clearance of a vessel loaded with rice and bound for Baltimore. Justice Johnson held Jefferson's instructions to the collector to have been illegal and unwarranted by the statute. Warren says:

> "And this young Republican Judge, then only thirty-six years old, and only four years after his appointment on the Supreme Bench by a Republican President, used these notable words of warning from the Judiciary to the President: 'The officers of our government from the highest to the lowest are equally subject to legal restraints.'"

Perhaps the climax of Jefferson's party's war with the court came in *Cohens* v. *Virginia,* 6 Wheat. 264, on the question of whether in a criminal case the Supreme Court could issue its writ of error in which the Commonwealth of Virginia, at the instance of Cohens, was "cited and admonished to be and appear at the Supreme Court of the United States." Feeling ran high. The *Richmond Enquirer* said, "The very title of the case is enough to stir one's blood." Mr. Justice Johnson, much to Jefferson's disgust, joined with his brethren on the bench to sustain the jurisdiction of the court. Eleven days later Justice Johnson delivered the opinion in *McClurg* v. *Tilliman,* 6 Wheat. 598, denying the right of a state court to issue a writ of mandamus to a federal official. The *Richmond Enquirer* then said, "Was this Judge one of those who formerly passed for a Republican? Was he raised to the Bench by Thomas Jefferson on account of his reputed attachment to the principles of '98 and '99?"

And so has it always been. President Jackson appointed five new Justices, including a new Chief Justice. The *Democratic Review* said in 1838, "The late renovation of the constitution of this august body, by the creation of seven of the nine members under the auspices of the present Democratic ascendancy, may be regarded as the closing of an old and the opening of a new era in its history." But no new era opened in the way that the Democrats hoped. The doughty General in the White House was soon sending for his appointees and berating them for their opinions. The new Chief Justice (Taney) rendered the opinion of the court in *Holmes* v. *Jennison,* 14 Pet. 540, upholding the exclusive authority of the Federal Government in foreign relations and denying the power of a state to surrender to a foreign nation a fugitive criminal. Thereupon, his Democratic brother, James Buchanan, said in the United States Senate, "I must say, and I am sorry in my very heart to say it, that some portions of his opinion in the case are latitudinous and centralizing beyond anything I have ever read in any other judicial opinion."

Again, when Judge Story held the Pennsylvania Fugitive Slave Act unconstitutional in *Prigg* v. *Pennsylvania,* 16 Peters 539, Warren reports:

> "For his part in the 'ignoble compliance with the slaveholders' will' Judge Story was hotly assailed at the North; but such criticism could not perturb a Judge who had penned to a friend the following noble words: '. . . You know full well that I have ever been opposed to slavery. But I take my standard of duty as a Judge from the Constitution'"

In the forties a case full of political dynamite came before the new Democratic Court. The Democratic or Loco Foco party enthusiastically supported Thomas W. Dorr of Rhode Island in the Dorr rebellion. In Rhode Island he was convicted and imprisoned for treason. His cause became distinctly a party issue. The Supreme Court, after prolonged argument amidst intense political excitement, refused to

interfere. Warren says, "By this decision, the Court . . . proved its determination to withstand appeals to any partisan views which it might be supposed to hold."

Again, in the sixties, President Lincoln appointed a majority of the court —among them his dear personal friend, David Davis. And it was David Davis who delivered the opinion of the court in *Ex Parte Milligan,* 4 Wall. 2, holding Lincoln's military courts illegal and their action void. The *National Intelligencer* said, "The hearts of traitors will be glad by the announcement that treason, vanquished upon the battlefield and hunted from every other retreat, has at last found a secure shelter in the bosom of the Supreme Court."

But are there not decisions of the Supreme Court on strict party lines? Yes. In the eighteen years of Chief Justice Fuller's regime (1892–1910) there was one, and only one, such decision. In that case (*Snyder* v. *Bettman,* 190 U. S. 249) by a strict party vote the court held that the federal estate tax could be collected on a bequest to the municipality. As Warren points out, the decision will not become of great importance "until the people of the United States have become far more eager to make bequests to municipalities than they are today." Certainly the division on party lines was wholly fortuitous.

Warren summarizes:

> "Time and time again it has been proved—and to the great honor of the profession—that no lawyer, whose character and legal ability would warrant his appointment to that lofty tribunal, would stoop to smirch his own record by submitting his judgment to the political touchstone; and no President has dared to appoint to that Court a lawyer whose character and ability would not meet the test."

[Warren's History of the U. S. Supreme Court is obtainable from Case and Comment in the popular 2 vol. ed. Priced at ten dollars.]

The Constitution the Middle-Way

By PROFESSOR SEWARD SALISBURY*

(Reprinted from the November 1936 Issue New York State Education)

Not very long ago, Marquis Childs brought out his book, *Sweden: the Middle Way,* which has made such an impression throughout the depth and breadth of the American commonwealth that a presidential commission has been sent to determine just how this middle-way works.

To find Americans looking thousands of miles across the water to another people with a different culture and tradition to learn about a system of social organization is certainly most unusual. It appears all the more unusual when we pause to reflect that the system we have been practicing these last one hundred and fifty years represents the essence of what we would learn from Sweden. For it is this very fact, namely, that the Constitution has been the embodiment par excellence of the middleway of doing things, that explains the phenomenal success of the Constitution in guiding the American people throughout a century and a half of such sweeping change.

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Although the founders of the Constitution may not have been supermen or demigods, they were, certainly, intensely practical and worldly wise. Their great success in constructing a document that has withstood the test of the years, arose not because they attempted to provide for every contingency, but because they confined themselves to a few fundamental principles derived from an accurate analysis of society and human nature.

It was agreed and accepted that the people should take part in the new government; but how many people and what people? Men had always disagreed as to what form of government was best for any given time or period. The leaders of the new nation also disagreed. Some of them obtained their political theory from John Locke who said that men were naturally good and that it was only bad government that created the disorder and turbulence of the Revolutionary England in which he lived. Others of the leaders of the new nation were more inclined to agree with Thomas Hobbes, who, living in the same period of English history as did Locke, believed that men were naturally bad, and that the surrounding disorder and turbulence were not the result of an arbitrary and strict government, but the result of the greed and selfishness of mankind.

Some of the leaders were liberals like Jefferson, and believed participation in the government should be extended to an increasing number of the people, that new ways should be adopted to solve governmental and social problems. Others were conservatives like Hamilton, and believed that government was so involved and intricate a responsibility that it should be restricted to the educated and superiorly endowed individuals who had proved by the place they had achieved in society, that they were capable of dealing with difficult and highly complex problems. The conservatives believed that the tried and traditional ways of attacking problems should be exhausted before embarking upon the new and unknown, for after all, were not the materials of society, men, essentially the same as they had always been.

The new nation was not entirely composed of liberals and conservatives, but included, also, a large group of influential citizens who were a little bit of both. Some of them, like John Adams, had been liberals in their younger days and as such were quite confident of being able to right the wrongs of the world through revolutionary and radical measures, but in the course of their lives they had turned to the conservative viewpoint. As mature and experienced men they became more willing to depend upon laws for their protection and security and less upon the natural goodness of their neighbors. They were anxious, also, that the younger people coming up should have to strive for and earn the good things of life.

A little over twenty years ago Professor Charles Beard pointed out in a significant little volume, *Economic Interpretation of the Constitution*, that the men making up the Constitutional Convention were mostly of the John Adams and Alexander Hamilton type, that almost without exception they were conservatives and men of property, favoring the aristocratic idea of government. As might be expected, they were interested in setting up a form of government which would protect property. They had already found out what a liberal form of government would do to their property rights. The state governments, controlled by the radicals, had during the Critical Period passed laws and encouraged practices which had relieved the lower classes of their obligations. The states had persisted in these debt repudiating practices, even at the expense of the security and stability of commerce and business.

It is not surprising, then, to find that the delegates to the Convention reflected their conservative leanings and protected property rights and the aristocratic classes by forbidding the states to impair the obligations of contracts, to coin money, and the like, or the national government to take property without "due process of law," a term that came to mean a guarantee from almost any abrupt change in the *status quo*.

Most of the great liberals were absent from the Convention. Jefferson was in France as the minister of the new country. Samuel Adams and Patrick Henry realized they were so much out of sympathy with the majority of the Convention that they were wasting their time by attending. Patrick Henry stayed away, because, he said, he "smelled a rat," which was his colorful way of condemning the aristocratic tendencies of the majority.

But even though the members of the Convention leaned distinctly to the right, and would have preferred to live under a more conservative form of government, they showed their great practical wisdom by providing for the interests and demands of the liberals. They not only compromised among themselves, but also with the great liberal element which was not at all effectively represented.

While the great demands of the conservatives were the protection of property rights, the great demands of the liberals were guarantees of liberty and freedom; liberty to have some share in the forms of government, liberty to go ahead unhampered by governmental restrictions to gain position and security, liberty to worship, liberty to go about one's everyday business in one's own individual way.

Accordingly the Convention met the demands of the liberals by forbidding titles of nobility, or imprisonment without jury trial, by providing for freedom of religion, of petition, of assembly, and the like. We may consider the first ten amendments as part of the original Constitution, for it was agreed by the conservatives these guarantees were necessary to obtain liberal support and would be embodied within the document as soon as the liberals made coherent and specific just what they wanted from the new government.

People still do and probably always will disagree honestly and sincerely as to what is the best form of governmental and social organization for any one epoch or series of epochs. Thinking in terms of radical, conservative, or the moderate and middle-way forms of government, it is significant to note that France between the years 1789 and 1875 varied from one extreme to the other, fifteen years being about the longest period any one of these forms of government was able to endure without succumbing to a revolutionary change. However, following the Franco-Prussian War, France for the first time adopted a middle-way government, a conservative republic. So well has this type of government been suited to the spirit of the French people, who are characteristically democratic, that it has lasted more than a half century, surviving even the Great War, a record four and five times greater than that of any of the other extreme governments she has tried.

America has a priceless heritage in a government and Constitution embodying the middle-way of life. The middle-way is the way of moderation and tolerance. The middle-way seeks the solution to differences and problems by the application of reason. To live under a government functioning according to the rule of reason, is the greatest privilege a lover of liberty may enjoy in a world marked by an increasing number of dictatorial governments whose citizens live under the shadow of fear and force.

Among the New Decisions

Appeal — *admission of evidence as to carrying of liability insurance by defendant.* In Fielding v. Publix Cars, 130 Neb. 576, 105 A.L.R. 1306, 265 N. W. 726, it was held that in an action against a taxicab company for injuries to a passenger, it is reversible error for the trial court to permit plaintiff on his case in chief to show that defendant is indemnified from loss by an insurance company, where such proffered evidence is not relevant to any material issue in the case.

Annotation: Admissibility of evidence, and propriety and effect of questions, statements, comments, etc., tending to show that defendant in personal injury or death action carries liability insurance. 105 A.L.R. 1319.

Assault — *in retaking property sold conditionally.* In Lamb v. Woodry, — Or. —, 105 A.L.R. 914, 58 P. (2d) 1257, it was held that a seller of personal property under a conditional sales contract who, by reason of the buyer's default in payments, has a right under the contract to retake the property, is entitled to repossess himself thereof only if he can do so peaceably, and may be held liable for assault and battery if he uses force in endeavoring to retake the property over the buyer's objection and obstruction, instead of resorting to legal process.

Annotation: Liability for assault or trespass in forcibly retaking property sold conditionally. 105 A.L.R. 926.

Banks — *liability of stockholders.* In Rainey v. Michel, — Cal. —, 105 A.L.R. 148, 57 P. (2d) 932, it was held that a statute making stockholders of any banking corporation individually liable, to the extent of the amount of their stock, for all contracts, debts, and engagements of the corporation, must, to render it constitutional, be construed as imposing liability only for debts incurred after its effective date.

Annotation: Applicability of constitutional or statutory provisions relating to added liability of stockholders to corporate debts contracted prior to the adoption of the provision. 105 A.L.R. 165.

Banks — *preferences on insolvency of money deposited for investment.* In Sindlinger v. Department of Financial Institutions, — Ind. —, 105 A.L.R. 501, 199 N. E. 715, it was held that the relation of trustee and cestui que trust, and not that of debtor and creditor, is created between a banking and trust company and one who makes a deposit in its co-called "Savings Investment Department," as regards the rights of the depositor on failure of the company, where the company solicits deposits in such department,

which it designates in its rules, set forth in the pass book, as "special deposits," to be received as "savings investments" at 5½ per cent interest, and agrees to keep segregated from its other assets and to invest in first mortgages and other approved securities, with the understanding that depositors therein shall be paid only out of the assets of that department.

Annotation: Trust or preference in assets of insolvent bank in respect of money deposited or left on deposit pursuant to agreement of bank to purchase bonds or make other investment for depositor. 105 A.L.R. 516.

Conflict of Laws — *domicil.* In Bethune v. Bethune, — Ark. —, 105 A.L.R. 814, 94 S. W. (2d) 1043, it was held that a divorce obtained in Mexico on the ground of "incompatibility of temperament," which is not a ground for divorce in Arkansas, the matrimonial domicil of the parties, by a husband who stayed in that country only nine days, executed a power of attorney, and appeared once in court but gave no testimony, will not be recognized in Arkansas, and is not, therefore, a defense to a suit by the wife in that state for a divorce, even though it is assumed that the laws of Mexico do not require any other residence there as a basis for jurisdiction, or evidence to support the allegations for divorce.

Annotation: Extraterritorial recognition and effect, as regards marital status, of a decree of divorce or separation rendered in a state or country in which neither of the parties was domiciled. 105 A.L.R. 817.

Conflict of Laws — *effect of election by widow against taking under husband's will.* In Colvin v. Hutchison, — Mo. —, 105 A.L.R. 266, 92 S. W. (2d) 667, it was held that a widow renouncing her husband's will in the state where its validity has been established by probate may claim dower rights in realty in another state, where the law of such state does not make her statutory or other rights in her husband's estate dependent upon the filing of a renunciation there.

Annotation: Conflict of laws regarding election for or against will; and effect in one state of election in another. 105 A.L.R. 271.

Conflict of Laws — *Statute of Frauds.* In Lams v. F. H. Smith Company, — Del. —, 105 A.L.R. 646, 178 A. 651, it was held that the principle that the construction and validity of a contract are governed by the law of the place where it is made applies to the formality or necessity of a written memorandum required by the Statute of Frauds.

Annotation: Statute of Frauds and conflict of laws. 105 A.L.R. 652.

Constitutional Law — *regulation of police and fire departments.* In Van Gilder v. City of Madison, — Wis. —, 105 A.L.R. 244, 267 N. W. 25, it was held that legislation regulatory of police and fire departments in cities of certain classes, in conditioning the power of a city council to decrease salaries of members of such departments upon the making of a recommendation by the board of police and fire commissioners, deals with a matter of state-wide concern within a constitutional provision conferring upon cities exclusive power to determine their local affairs and government subject to such enactments of the legislature of state-wide concern as shall, with uniformity, affect every city or every village.

Annotation: Matters pertaining to police department as within exclusive control of municipalities under home-rule charters. 105 A.L.R. 259.

Contracts — *anticipatory breach.* In Brimmer v. Union Oil Company of California, 105 A.L.R. 454, 81 F.

(2d) 437, it was held that the doctrine of anticipatory breach of contract is confined in its application to contracts which contain mutually executory provisions and has no application to a contract which the complaining party has fully performed.

Annotation: Doctrine of anticipatory breach as applicable to a contract which the complaining party has fully performed. 105 A.L.R. 460.

Corporations — *power to change obligations to stockholders.* In Sutton v. Globe Knitting Works, 276 Mich. 200, 105 A.L.R. 1447, 267 N. W. 815, it was held that the operation of a statute permitting the amendment of articles of incorporation having the effect to change the rights, privileges, and preferences of the holders of shares of any class provided such amendment is approved by the vote of the holders of a majority of the shares of each class of shares entitled to vote and a majority of shares of each class whose rights, privileges, or preferences are so changed, is restricted, as respects an alteration of the date fixed for the redemption of preferred stock by the corporation, to cases in which the holders of shares acquired them subsequently to the taking effect of such statute, by the further provisions thereof that the liability of any corporation shall not in any way be lessened or impaired by any change or amendment, and that the statute shall not impair or affect any rights accruing or acquired prior to the time of its taking effect.

Annotation: Power of corporation to change obligations to stockholders. 105 A.L.R. 1452.

Corporations — *right to practise law.* Re Maclub of America, Inc. — Mass. —, 105 A.L.R. 1360, 3 N. E. (2d) 272, it was held that common-law rules respecting the practice of law are not enlarged by a statute declaring that no corporation shall practise law or appear as an attorney for any person other than itself in any court or before any judicial body, or hold itself out to the public as being entitled to practice law or give legal advice in matters not relating to its business.

Annotation: Right of corporation to perform or to hold itself out as ready to perform functions in the nature of legal services. 105 A.L.R. 1364.

Corporations — *voting trusts as against public policy.* In Alderman v. Alderman, 178 S. C. 9, 105 A.L.R. 102, 181 S. E. 897, it was held that voting trust agreements by which the voting power of the entire capital stock of a corporation other than that owned by the trustees individually was vested in two of its stockholders for the lifetime of the survivor, with a view to assuring the continuance of management which had in the past been successful, are not against the public policy of a state the Constitution and statutes of which contain no indication that it is against such public policy for stock in corporations to be held and voted by others than the true owners, but, on the contrary, permit stock to be voted by proxy.

Annotation: Validity of voting trust or other similar agreement for control of voting power of corporate stock. 105 A.L.R. 123.

Damages — *for nonpayment of obligation payable in specified currency.* In Anglo-Continentale Treuhand v. St. Louis Southwestern Railway Company, 105 A.L.R. 636, 81 F. (2d) 11, it was held that damages for breach of contract contained in negotiable interest coupons, payable upon presentation in New York in a certain number of dollars in United States gold coin, or in Holland in a certain number of guilders, are to be calculated in dollars at the gold par of the guilder, on fail-

Case and Comment
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ure of the debtor to pay upon presentation of the coupons in Holland, although the plaintiff is a foreign corporation which purchased the coupons subsequent to June 5, 1933, when the Joint Resolution of Congress, relative to payment in gold, became effective.

Annotation: Rate of exchange to be taken into account in assessing damages for breach of contract or nonpayment of money obligation payable in foreign currency. 105 A.L.R. 640.

Damages — *rate of discount in computing present value of future earnings lost on account of personal injury.* In Klinge v. Southern Pacific Company, — Utah, —, 105 A.L.R. 204, 57 P. (2d) 367, it was held that the fact that in an action for personal injuries by which plaintiff's earning capacity has been impaired there is no evidence as to the prevailing rate of interest on money invested does not make it proper to instruct the jury that in ascertaining the present value of future earnings they may figure on the legal rate of interest of 8 per cent.

Annotation: Rate of discount to be considered in computing present value of future earnings or benefits lost on account of death or personal injury. 105 A.L.R. 234.

Death — *widow's right to sue for death of husband.* In Van Glider v. Gugel, 220 Wis. 612, 105 A.L.R. 824, 265 N. W. 706, it was held that under a statute which conditions a widow's right to sue in her own name for her husband's death on the absence of any cause of action in favor of his estate, a widow may maintain an action to recover for her pecuniary loss by reason of her husband's death when he sustained no conscious pain and suffering and his estate did not pay and is not being held liable for his funeral expenses.

Annotation: Construction and application of provisions of death statute that make the question whether the action shall be brought by the personal representative or by beneficiaries dependent upon existence or nonexistence of cause of action in estate. 105 A.L.R. 834.

Election of Remedies — *to enforce lien of public improvement certificate.* In Hawkeye Life Insurance Co. v. Valley-Des Moines Co. 220 Iowa, 556, 105 A.L.R. 1018, 260 N. W. 669, it was held that an action in equity will not lie to foreclose the lien of an improvement certificate conferring upon the bearer the right to collect and receive every assessment embraced in the certificate by or through any of the methods provided by law for their collection, where the method provided is by sale as in the case of delinquent ordinary taxes.

Annotation: Exclusiveness of method prescribed by statute or ordinance

for enforcement of special assessment for public improvement. 105 A.L.R. 1027.

Eminent Domain — *slum clearance.* In New York City Housing Authority v. Muller, 270 N. Y. 333, 105 A.L.R. 905, 1 N. E. (2d) 153, it was held that condemnation of property in furtherance of a governmental project for slum clearance and the providing of housing accommodations to be rented to a class designated as "persons of low income" or to be leased or sold to limited dividend corporations is for a public use.

Annotation: Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance). 105 A.L.R. 911.

Equity — *court's power to authorize pledge of securities held in trust.* In Seigle v. First National Company, — Mo. —, 105 A.L.R. 181, 90 S. W. (2d) 776, it was held that a court of equity to which holders of certificates of participation in securities held in trust for their benefit have, on the announcement of the company which issued the certificates that it could no longer meet its obligations to the certificate holders, made application for the liquidation of the securities held in the trust and the distribution of the proceeds to the certificate holders, has power, where it appears that the present market value of the securities is much less than the amount of the outstanding certificates, to authorize a trustee to pledge the securities for a loan to be distributed as a dividend to the certificate holders, even though the company which issued the certificates and is obligated to redeem them at maturity is not shown to be insolvent.

Annotation: Power of court to authorize pledge or other disposal of property in manner not authorized by trust deed or trust agreement securing bonds or participation certificates. 105 A.L.R. 195.

Estoppel — *to deny liability on accommodation note.* In Hammond v. Tate, 105 A.L.R. 433, 83 F. (2d) 69, it was held that the fact that the maker of an accommodation note, executed with the understanding, known to the bank, that it would be pledged as security for future advances by a bank to the accommodated party, recognized it as a valid obligation after becoming aware that it had been pledged to the bank as security for an existing indebtedness, does not estop him from denying that it is invalid for want or failure of consideration, the bank not having been misled to its injury.

Annotation: Failure of accommodation maker or indorser to disaffirm transaction, or his continued recognition of note after learning of its use for purpose other than intended, as ratification of, or estoppel to assert, the diversion. 105 A.L.R. 437.

Evidence — *declarations of grantor.* In Carpenter v. Carpenter, — Or. —, 105 A.L.R. 386, 56 P. (2d) 305, it was held that the declarations of a donor, since deceased, are admissible on the question whether a gift was to his daughter alone, or was to be shared between the daughter and her husband.

Annotation: Admissibility of declarations by donor subsequent to alleged gift, on issue as to gift. 105 A.L.R. 398.

Evidence — *foreign substance in bottled beverage.* In Fisher v. Washington Coca-Cola Bottling Works, — App. D. C. —, 105 A.L.R. 1034, 84 F. (2d) 261, it was held that proof that after drinking a beverage having a peculiar taste, from a bottle opened for him by dealer, plaintiff became ill, and that the bottle had adhering to it a moldy looking substance, is sufficient to carry to the jury the question of

negligence on the part of the bottler, where no specific act of negligence was alleged by plaintiff.

Annotation: Presumption of negligence from foreign substance in food. 105 A.L.R. 1039.

Evidence — *general reputation of testamentary capacity.* In Re Nelson, 210 N. C. 398, 105 A.L.R. 1441, 186 S. E. 480, it was held that evidence of general reputation as to a testator's business ability is inadmissible on the issue of his testamentary capacity.

Annotation: Admissibility of evidence of reputation on issue of mental condition, or testamentary or contractual incapacity or capacity. 105 A.L.R. 1443.

Evidence — *hurtful effect of libelous publication.* In Luna v. Seattle Times Company, — Wash. —, 105 A.L.R. 932, 59 P. (2d) 753, it was held that evidence of aversion, contempt, or hatred manifested, as a consequence of a libelous publication, by friends and acquaintances of the person libeled, is competent to show the hurtful tendency of the defamatory words.

Annotation: Admissibility in action for slander or libel of evidence of aversion or contempt manifested as consequence of libelous or slanderous publication, to show its hurtful tendency. 105 A.L.R. 944.

Evidence — *parol as to conditional note.* In Cockrell v. Taylor, 122 Fla. 798, 105 A.L.R. 1338, 165 So. 887, under the provision of the Negotiable Instruments Law that as between the immediate parties to the instrument delivery may be shown to have been conditional, a good defense to an action on notes brought by the payee against the maker, provable by parol evidence, is stated by pleas alleging that the notes were given for commission on land sold by the payee for the maker and were delivered to the former upon the express, prior, mutually agreed upon condition that they were to be paid only when the purchaser made the deferred payments on the purchase price, and were not to be paid unless he did so, and that the purchaser had defaulted.

Annotation: Admissibility of parol evidence to show that a bill or note was conditional, or given for a special purpose. 105 A.L.R. 1346.

Evidence — *sufficiency — disbarment of attorney.* In Re Mayberry, — Mass. —, 105 A.L.R. 976, 3 N. E. (2d) 248, it was held that cause for disbarment of an attorney may be established by a fair preponderance of the evidence, and proof beyond reasonable doubt is not required.

Annotation: Degree or quantum of proof necessary to justify disbarment or suspension of attorney. 105 A.L.R. 984.

Evidence — *telephone conversation.* In Andrews v. United States, 105 A.L.R. 322, 78 F. (2d) 274, it was held that to render testimony detailing a telephone conversation competent, it is necessary to supply some evidence of the identity of the person with whom the conversation is alleged to have been had.

Sufficient proof of the identity of the person with whom a telephone conversation was held, to constitute the required foundation for its introduction in evidence in a prosecution for using the mails in furtherance of a scheme to defraud, is supplied by the records of the telephone company that long-distance calls were placed and conversations had from the office of defendant with the persons claiming to have had such conversations, at about the respective times which they fixed in their testimony, and by receipts for money and correspondence subsequently passing between the parties

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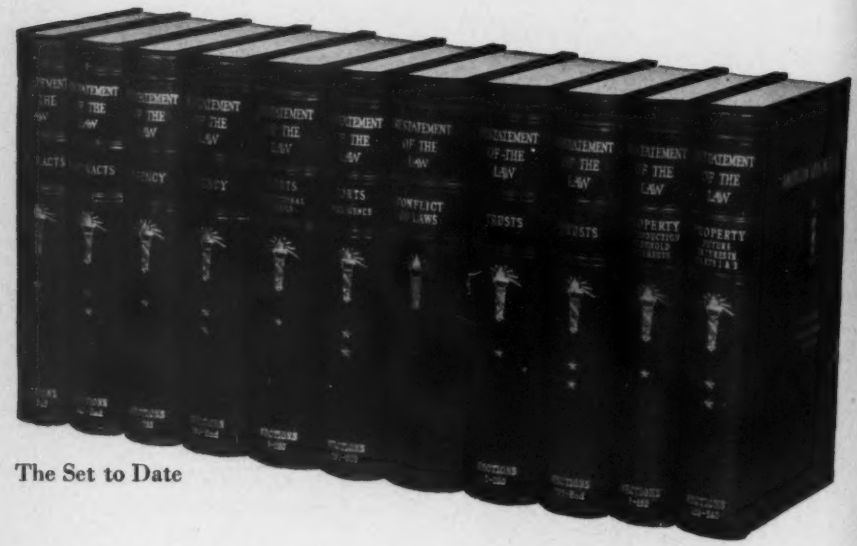

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which indicated strongly that it was defendant who had the conversations concerning which the witnesses testified.

Annotation: Admissibility of telephone conversations in evidence. 105 A.L.R. 326.

Gaming — *"numbers game" as.* In Forte v. U. S. — App. D. C. —, 105 A.L.R. 300, 83 F. (2d) 612, it was held that the "numbers game," in which each player selects a number and the winning number is determined by taking the first digit to the left of the decimal of the aggregate of prices paid for the first, second, and third in each of the first three races at a certain race track, the holder of the winning number receiving a multiple of the amount of his play, is not a bet on a horse race, but a lottery, although the winning number is not determined by drawing.

Annotation: "Numbers (or number) game" or "policy game" as a lottery. 105 A.L.R. 305.

Highways — *municipal power to prohibit sales in streets.* In Chicago v. Rhine, 363 Ill. 619, 105 A.L.R. 1045, 2 N. E. (2d) 905, it was held that the power of a municipality to regulate sales upon streets, sidewalks, and public places includes authority to suppress sales thereon.

Annotation: Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 105 A.L.R. 1051.

Income Taxes — *stock dividends.* In Koshland v. Helvering, — U. S. —, 80 L. ed (Adv. 845), 105 A.L.R. 756, 56 S. Ct. 767, it was held that while a dividend to holders of common stock of new common shares conferring no different rights or interests than did the old, and so not enlarging the holder's proportionate interest in the net assets of the corporation, does not constitute the receipt of income by the stockholders, a dividend in common stock to holders of preferred stock entitled upon dissolution or liquidation to preferential payment of the face value of the stock plus accrued dividends, and no more, is income taxable under the Sixteenth Amendment, since it gives the stockholder an interest different from that which his former stock holdings represented.

Annotation: Income tax in relation to stock dividends (including character of corporate distributions as stock dividends). 105 A.L.R. 761.

Indictment — *Erroneous instructions.* In State v. Fowler, — Wis. —, 105 A.L.R. 568, 267 N. W. 65, it was held that an indictment is not vitiated by an erroneous instruction to the grand jury.

Annotation: Erroneous instructions by court to grand jury as ground for quashing indictment. 105 A.L.R. 575.

Injunction — *damages in lieu of injunction.* Cox et al. v. City of New York, 265 N. Y. 411, 105 A.L.R. 1378, 193 N. E. 251, it was held that an award of damages in lieu of a mandatory injunction in a suit to enforce restoration by a railroad company of bridges essential to the enjoyment of an easement is within the judicial discretion of the court, where the bridges were removed by the railroad company in the belief that it had acquired the easement in question, the cost of restoration would largely exceed the value of the rights invaded, and the easement could be acquired by the railroad company through condemnation proceedings of which the same court would have jurisdiction.

Annotation: Power of equity to require acceptance of damages in lieu of injunctive relief asked. 105 A.L.R. 1381.

Insurance — *cancelation of change of beneficiary made under mistake of fact.* In Rosenblum v. Manufacturers Trust Co. 270 N. Y. 79, 105 A.L.R. 947, 200 N. E. 587, it was held that a beneficiary under an insurance policy has, though his designation is revocable, such an interest as entitles him to maintain an action for the cancelation of a change of beneficiary as having been made by the insured under a mistake of fact.

Annotation: Avoidance on ground of fraud, mistake, duress, or mental incompetency of otherwise validly effected change of beneficiaries of insurance policies. 105 A.L.R. 950.

Insurance — *flood as "accidental collision."* In Long v. Royal Insurance Company, 180 Wash. 360, 105 A.L.R. 1423, 40 P. (2d) 132, it was held that the loss of a motor truck carried away by a flood is within the coverage of a policy of insurance against loss caused "by accidental collision with another object."

Annotation: Insurance covering damage to automobile by accident or collision. 105 A.L.R. 1426.

Insurance — *group insurance where employee laid off.* In Emerick v. Connecticut General Life Insurance Company, 120 Conn. 60, 105 A.L.R. 413, 179 A. 335, it was held that the coverage of an employees' group insurance policy, which by its terms was to "automatically cease with the termination of employment," is not terminated by dropping from the pay roll an employee who had been laid off and notifying the insurer that his insurance is to be canceled, where no notice of termination of employment was given the employee, who under the terms of a policy had a right (to the exercise of which notice of termination of employment was essential) within thirty-one days after the termination of employment to take out a policy in any of the forms customarily issued by the insurer, without further evidence of insurability.

Annotation: Duration of risk under group insurance. 105 A.L.R. 418.

Insurance — *incontestable clause.* In Romano v. Metropolitan Life Insurance Company, 271 N. Y. 288, 105 A.L.R. 989, 2 N. E. (2d) 661, it was held that an insurance company against which an action by the beneficiary to recover for the death of the insured is brought by service of summons within the two-year period after which the policy is by its terms incontestable is not precluded, after the two-year period has expired, from setting up the defense of invalidity of the policy on the ground of fraud, where it granted requests of the plaintiff for extensions of time to serve the complaint until after the two-year period had expired, although, had it insisted upon compliance with its demand for service of the complaint, it would have had opportunity within such period to set up the defense in its answer, and bad faith or an intent to intrap it is not shown on the part of the plaintiff.

Annotation: Time when incontestable clause in life insurance policy becomes effective; death of insured before end of contestable period. 105 A.L.R. 992.

Insurance — *statute as to attachment to policy of copy of application.* In Enelow v. New York Life Insurance Company, 105 A.L.R. 493, 83 F. (2d) 550, it was held that the requirement of a statute that "correct copies of the application as signed by the applicant," forming part of a contract of insurance, must be attached to the policy in order to be admissible in evidence, is met by attaching a photostatic copy which, though reduced in size, is sufficiently legible,—particularly where the insured, notwithstanding a caution-

ary notice on the sheet to which the photostatic copy was attached that it should be carefully examined and the insurer notified of any error or omission, kept the policy for some eighteen months without complaining that the copy was illegible.

Annotation: What necessary to satisfy statutory requirement that copy of application be attached to insurance policy. 105 A.L.R. 497.

Internal Revenue — *lien for tax.* In Re Rosenberg, 269 N. Y. 247, 105 A.L.R. 1238, 199 N. E. 206, it was held that the interest of a beneficiary in the income of a trust is a right to property within the provisions of a Federal statute that the amount of a delinquent Federal tax shall be a lien in favor of the United States upon all property and rights to property belonging to the person liable for the tax.

Annotation: Federal tax liens. 105 A.L.R. 1244.

Intoxicating Liquors — *"restaurant" entitled to liquor license.* In Guillara v. Liquor Control Commission, 121 Conn. 441, 105 A.L.R. 563, 185 A. 398, it was held that a place at which, during the hours when restaurants are usually open, hot meals are served irregularly and intermittently, instead of at established hours, to all customers ordering them, is, if the service is sufficient in nature to amount to evidence, and afford assurance of, a bona fide restaurant business instead of a mere pretext for the obtaining of a permit to sell alcoholic liquor as a principal enterprise, a restaurant within a statute relating to the sale of alcoholic beverages, and defining a restaurant to which a permit may be granted as "space, in a suitable and permanent building, kept, used, maintained, advertised and held out to the public to be a place where hot meals are regularly served at least twice daily as the principal business conducted therein."

Annotation: What amounts to "restaurant" or "restaurant business" within intoxicating liquor law. 105 A.L.R. 566.

Judgment — *res judicata of finding as to alimony.* In Bannon v. Bannon, 270 N. Y. 484, 105 A.L.R. 1401, 1 N. E. (2d) 975, it was held that the report of a referee, confirmed by the court, on an application in a separation action for alimony pendente lite, that by reason of the invalidity of the applicant's divorce from a former husband the relation of husband and wife did not exist between the parties, in consequence of which the application was denied, is not such a final determination of the fact as to be res judicata.

Annotation: Findings or order upon application for alimony pendente lite in action for divorce or separation as res judicata. 105 A.L.R. 1406.

Jury — *exclusion from jury panel of all members of certain class.* In State v. Royster, — S. C. —, 105 A.L.R. 1522, 186 S. E. 921, it was held that a motion on behalf of one charged with murder by reason of a killing in an affray between striking and nonstriking employees of a textile factory, that, because of the feeling between union and nonunion textile workers engendered by the killing, all textile members of the jury venire be excluded from serving as jurors in the case, is improperly granted where a means for excluding prejudiced persons from serving as jurors is afforded by examination on voir dire.

Annotation: Power of court to exclude from panel or venire for particular case all persons belonging to a class membership in which may be supposed to involve bias or prejudice. 105 A.L.R. 1527.

Judgment — *to remove cloud on title to personal property.* In Kalman v. Shubert, 270 N. Y. 375, 105 A.L.R. 289, 1 N. E. (2d) 470, it was held that an action for a declaratory judgment is an appropriate remedy to determine whether a claim of exclusive right to perform certain operettas on the payment of specified royalties, which is based on a written instrument claimed by defendant to be a contract and by plaintiff to be merely an unaccepted offer, and which constitutes a cloud on plaintiff's title to the operettas, there being, under the circumstances, no adequate remedy by existing forms of action.

Annotation: Right to quiet title or remove cloud on title to personal property by suit in equity or under declaratory judgment act. 105 A.L.R. 291.

Master and Servant — *occupational disease.* In McCreery v. Libby-Owens-Ford Glass Company, 363 Ill. 321, 105 A.L.R. 75, 2 N. E. (2d) 290, it was held that an employer's common-law duty to furnish his employees a reasonably safe place in which to work does not extend to the provision of means of minimizing the possibility of the contraction of a lung disease by an employee through inhalation of dusts of manufacture.

Annotation: Liability of employer at common law, or apart from workmen's compensation or specific occupational disease statutes, for occupational disease contracted by employee. 105 A.L.R. 80.

Mortgage — *right to rents and profits.* In Franzen v. G. R. Kinney Company, 218 Wis. 53, 105 A.L.R. 740, 259 N. W. 850, it was held that a mortgagor of land is, notwithstanding the mortgage pledges the rents and profits, entitled to the rents until the mortgagee takes possession under his mortgage either by surrender of the premises to him or by commencing foreclosure and securing the appointment of a receiver.

Annotation: Right to receive rent as between mortgagor and mortgagee of leased premises. 105 A.L.R. 744.

Mortgage Sale — *confirmation on condition of increased bid.* In Bovay v. Townsend, 105 A.L.R. 359, 78 F. (2d) 343, it was held that a court may not make its confirmation of a mortgage foreclosure sale conditional upon an increase of the bid by the successful bidder where a statute provides that all real estate sold by order of the court shall be sold at public sale and that the sale be advertised in a newspaper for four weeks.

Annotation: Power of court as condition of confirmation of judicial sale to require successful bidder to increase his bid. 105 A.L.R. 366.

Municipal Corporations — *computing amount of debt.* In Ward v. Pittsburgh, — Pa. —, 105 A.L.R. 682, 184 A. 240, it was held that in determining whether a contemplated increase in a city's indebtedness will cause it to exceed the amount which the city may constitutionally borrow without a vote of the electors, such portion of delinquent taxes as is probably collectable may, save where such taxes have been treated as current revenue for the payment of current expenses, be deducted from the amount of the outstanding indebtedness, where a statute provides that the net amount of a city's indebtedness shall be ascertained by deducting from the gross amount thereof the moneys in the treasury, all outstanding solvent debts, and all revenues applicable within one year to the payment of the same.

Annotation: Municipal debt limit as affected by obligations to municipality. 105 A.L.R. 687.

Municipal Corporations — *power to compromise claims.* In Snyder v.

City of St. Paul, — Minn. —, 105 A.L.R. 168, 267 N. W. 249, it was held that a municipality may, unless forbidden by statute or charter, compromise claims against it without specific express authority, such power being implied from its capacity to sue and to be sued, and ordinarily power to compromise claims is inherent in the common council as a representative of the municipality. If it makes such a compromise in good faith, and not as a gift in the guise of a compromise, the settlement is valid and does not depend upon the ultimate decision that might have been made by a court for or against the validity of the claim.

Annotation: Power of city, town, or county or its officials to compromise claim. 105 A.L.R. 170.

Negligence — *liability of manufacturer of defective article to purchaser from retailer.* Grant v. Australian Knitting Mills, Ltd. [1936] A. C. 85, 105 A.L.R. 1483, it was held that a manufacturer's liability to a purchaser from a retailer who suffers injury because of the condition of the goods must rest in tort the gist of which is negligence, there being no privity of contract between the manufacturer and the purchaser from the retailer.

Annotation: Liability of manufacturer or packer of defective article for injury to person or property of ultimate consumer who purchased from middleman. 105 A.L.R. 1502.

Notice — *possession of prior grantor.* In Chandler v. Georgia Chemical Works, — Ga. —, 105 A.L.R. 837, 185 S. E. 787, it was held that the grantor's continued possession of land after the execution of a deed absolute in form but in fact in trust for the grantor is constructive notice of his rights therein to one taking a conveyance from the grantee without actual notice of the trust.

Annotation: Grantor's continued

possession of land after execution of deed as notice of his claim adverse to title conveyed. 105 A.L.R. 845.

Officers — *effect of acceptance by state senator of appointment as supervisor of Federal Works Progress Administration.* In State v. Hutchinson, — Wash. —, 105 A.L.R. 1234, 59 P. (2d) 1117, it was held that a state senator's acceptance of an appointment as a district supervisor of the Federal Works Progress Administration, made by the state director acting under authority of the Federal Emergency Relief Appropriation Act of 1935, does not vacate his seat in the state legislature under a constitutional provision that acceptance of an appointment to civil office shall have such effect.

Annotation: One acting under authority of emergency or relief board or administration as civil officer within contemplation of constitutional provision against holding two or more offices at same time. 105 A.L.R. 1237.

Payment — *authority of agent to receive.* In Oleson v. Albers, 130 Neb. 823, 105 A.L.R. 714, 266 N. W. 632, it was held that where a principal voluntarily places an agent in such a situation that a buyer of ordinary prudence, conversant with the nature of the particular business, is justified in presuming that such agent has authority to sell and collect payment for commodities placed in his possession by the principal, such buyer will be protected in relying upon the appearances of authority.

Annotation: Authority, or apparent authority, of agent to receive payment for commodities which he has authority, or apparent authority, to sell, or for which he is authorized, or apparently authorized, to find a market. 105 A.L.R. 718.

Specific Performance — *compelling transfer of stock on corporate books.* In Virginia Public Service Co. v. Steindler, — Va. —, 105 A.L.R. 1413, 187 S. E. 353, it was held that the holder of a certificate of stock who elects to sue in equity to compel the corporation to transfer the stock to his name is not, after receiving the same together with all dividends accumulating during the controversy, with interest thereon, and after selling the stock pending the litigation, entitled to recover of the corporation damages measured by the decline in the market value of the stock between the date when the transfer should have been made and when it was actually made, not due to any fault of the corporation.

Annotation: Right of one seeking specific performance to recover as damages an amount measured by depreciation in value of property itself, or in its market price or value, subsequent to defendant's default. 105 A.L.R. 1421.

Workmen's Compensation — *refusal of injured employee to submit to medical or surgical treatment.* In Robinson v. Jackson, — N. J. —, 105 A.L.R. 1446, 184 A. 811, it was held that an injured employee's refusal to accept medical or surgical treatment proffered by the employer may not be shown in diminution of an award of compensation under the Workmen's Compensation Act, unless such treatment is free from danger to life and health and from extraordinary suffering, and according to the best medical or surgical opinion offers a reasonable prospect of restoration or relief from the disability.

Annotation: Workmen's compensation: duty of injured employee to submit to operation or to take other measures to restore earning capacity. 105 A.L.R. 1470.

CURRENT U. S. DECISIONS SELECTED FROM L. ED. ADVANCE OPINIONS

Unemployment Insurance

In Chamberlin v. Andrews, 81 L. ed. Adv. Op. 69, the New York Unemployment Insurance Law was upheld, without opinion, by an equally divided court.

Conflict of Laws

In John Hancock Mutual Life Ins. Co. v. Yates, 81 L. ed. Adv. Op. 110, it was held statute of state in which contract of life insurance was made, as to effect of misstatements in application, must be applied in action on policy in another state.

Fair Trade Acts

In Old Dearborn Dist. Co. v. Seagram Dist. Corp., 81 L. ed. Adv. Op. 130 and Pep Boys v. Pyroil Sales Co., 81 L. ed. Adv. Op. 138, the Fair Trade Act upheld.

Jury

In United States v. Wood, 81 L. ed. Adv. Op. 80, it was held the statute making governmental employees and pensioners eligible as jurors in criminal cases does not violate right to impartial jury.

Taxation

In Binney v. Long, 81 L. ed. Adv. Op. 153, it was held that contingent remainders may be subjected to succession tax by statute enacted after their creation.

Arms Embargo

In United States v. Curtiss-Wright Export Corp., 81 L. ed. Adv. Op. 166, it was held that legislative power is not unconstitutionally delegated by a Joint Resolution of Congress authorizing the President to put into effect by proclamation, a prohibition against sale of arms and munitions of war to certain belligerents.

Bankruptcy

In City Bank Farmers Trust Co. v. Irving Trust Co., 81 L. ed. Adv. Op. 241, provability in reorganization proceedings under Sec. 77B of the Bankruptcy Act, of lessor's claim for damages arising out of rejection of lease, as affected by lessor's acceptance of surrender.

Criminal Law

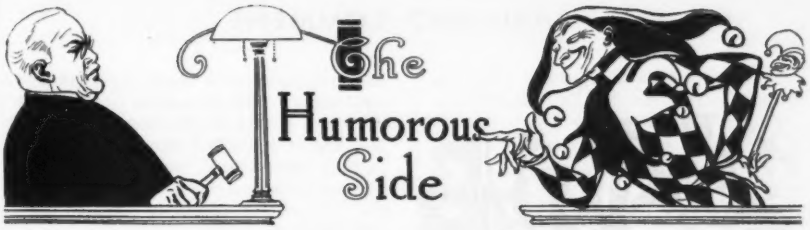
In De Jonge v. Oregon, 81 L. ed. Adv. Op. 189, it was held participation in lawful public meeting cannot be made punishable because of the auspices under which it was held.

Municipal Corporations

In Hauge v. Chicago, 81 L. ed. Adv. Op. 217, municipal ordinance requiring city weighmaster's certificate showing weight of vehicle when empty, held constitutional as to one trucking coal from point outside city.

Commerce

Kentucky Whip & Collar Co. v. Illinois C. R. Co., 81 L. ed. Adv. Op. 183, Federal statute restricting transportation and requiring labeling of convict-made goods, upheld.



Mingle a little folly with your wisdom.—Horace.

Heavy Slumber.—Bells clanged and motors roared in the fire station. The new recruit jumped out of bed, slipped into his one-piece suit, and raced to the engine.

"What's the idea?" said the Captain.

"Why don't we go to the fire?" asked the recruit.

"We just got back," answered the Captain. "You slept through it."

Considerate.—Magistrate: "If you were there for no dishonest purposes, why were you in your stocking feet?"

Defendant: "I 'eard there was sickness in the family."—*Popular Government.*

Tax Troubles.—A man has told a county court judge that he would have bought a house for his daughter last year if the income tax had been reduced as anticipated in the newspapers. In other words, his ambition was nipped in the budget.—*Punch.*

Experience.—Kit: "Gee, but that date last night was fresh."

Kat: "Why didn't you slap his face?"

Kit: "I did; and take my advice, never slap a guy when he's chewing tobacco."—*The Earth Mover* (*Aurora, Ill.*).

Shaky.—A man was fumbling at his keyhole in the small hours of the morning. A policeman saw the difficulty and came to the rescue.

"Can I help you to find the keyhole, sir?" he asked.

"Thash all right, old man," said the other cheerily, "you jusht hol' the housh shtill and I can manage."—*Fifth Corps Area News.*

Efficiency.—A retailer, on receiving the first delivery of a large order, was annoyed to find the goods not up to sample. "Cancel my order immediately," he wired to the manufacturers.

They replied: "Regret can not cancel immediately. You must take your turn."—*Calendar.*

Chit-Chat.—Officer (to colored driver who has been whipping his horse): "Don't whip him, man—talk to him."

Driver (to horse by way of opening conversation): "Ah comes from N'Awleans. Wheah does you-all come from?"—*Southern Lumberman.*

Static.—The man at the theater was annoyed by the conversation in the row behind.

"Excuse me," he said, "but we can't hear a word."

"Oh," replied the talkative one; "and is it any business of yours what I'm telling my wife?"—*Portland (Me.) Express.*

Obliging.—A Los Angeles patrolman had brought in a Negro woman somewhat the worse for wear, and the desk sergeant, with his very best scowl, roared:

"Liza, you've been brought in for intoxication!"

"Dat's fine!" beamed Liza. "Boy, you can start right now!"—*The Bee-Hive (East Hartford, Conn.).*

Great Oaks . . .—A colored lad killed a man. . . . "Don't tell me," the irate judge scowled, "that you killed a man for the paltry sum of three dollars." . . . The lad merely shrugged his shoulders and replied, "You-all don't see, jedge . . . but three bucks here and three bucks there, they all add up!"—*New York Evening Journal.*

An Apt Comparison.—Ravitz v. Steurele (1934) 257 Ky. 108, 77 S. W. (2d) 360—". . . Have classified and distinguished themselves from all other money lenders by

the investment of a small capital and the employment of an abundance of deceit, chicane and devices for business purposes. It is a matter of general knowledge they loan of their capital small sums to helpless and necessitous borrowers on salaries and chattels, and employ nefarious plans to coerce and extort from them their daily, weekly and monthly earnings, under the guise of charges, fees and interest for the use of their money. The difference in the method employed in their business and those of all other classes of money lenders is like unto that between the methods of the professional bandit and those of the bank." Richardson, J.

May Turn over New Leaf but Must Not Steal the Plant.—A Vancouver resident is seized with an impulse to steal shrubbery and plants every time he gets drunk.

"I don't know how to account for it except that I love flowers and plant life," he told Magistrate H. S. Wood in police court. "If you give me a chance, though, I'll promise to turn over a new leaf," he earnestly added.

"That's all right with me," said the magistrate, sentencing the botanical reveller to four days he had already spent in jail. "Turn over a new leaf, but don't steal the plant."—*Bench and Bar.*

Going Them One Better.—Three tailors who did business on the same street were bitter competitors. One day the first one hung up a new sign. It read—"The best tailor in town."

The second chap, not to be outdone, soon put one in his window which read—"The best tailor in the country."

The third looked at the two signs and scratched his head. Shortly afterwards he placed the following notice above his door; it said—"The best tailor on the street."—*Exchange.*

Trap.—Smoking a cigarette, the small boy advanced upon the ticket office and demanded a half-fare ticket to Binghampton.

"What!" cried the booking clerk, "a kid like you smoking a cigarette?"

"Kid be blowed!" was the indignant reply. "I'm fourteen."

"Full fare, please."—*Grit (Sidney, Australia).*

Impasse.—Mrs. Williams could only find two aisle seats, one behind the other. Wishing to sit with her sister, she cautiously surveyed the man in the next seat. Finally she leaned over and whispered: "I beg your pardon, sir, but are you alone?"

Without even turning his head in the slightest, but twisting his mouth and shielding it with his hand, he muttered: "Cut it out, sister, cut it out; the wife's with me." —*The Wall Street Journal.*

Once in a Lifetime.—MAGISTRATE: "What induced you to strike your wife?"

HUSBAND: "Well, your Wuship, she 'ad 'er back to me, the frying-pan was handy, and the back door was open, so I thought I'd take me chance."—*The Earth Mover (Aurora, Ill.).*

Emancipation—"Marie H. Taylor Last Will.—My will to Susie Blackburn, my daughter, to be *her whole* sole advesser to her mother's small pocessions the three house and lots in Greenville, Mississippi. Also the house on 1522 C. The 1st apt. on 258 Cambridge Ave. The uper flat Longley Taylor the said husband of Marie Taylor, if he should ever marry anymore he will and must keep the cealings clean and if his wife can't get along with my daughter Susie Blackburn she will have to move. If he should stay single he then can live anywhere in the house that he wants it will be alright with the said Susie Blackburn.

Why I do this he will let some one take all he has away from him. Susie will protect him as a father. My small amt. of cash is Susie Blackburns. The Life and C is to $620. the remainder of the ints which was $1000. I am still under there protection after drawing $380. which is in the P.O.B. in the name of Marie H. Taylor, she is my only heair (W). Mrs. Longstreet, Mrs. J. Read and Mrs. R. Butlar I have told them.

No *one* in the *world* is have a say so over Susie Blackburn. She is *her* (own sole boss). My husband is to have a home all ways. Longly he is to have $10. in cash.

He must help her to keep up the said home on 258 Cambridge or she will have to do what ever she wants to do that is best to sell that will be left to her it is to go down Susie's mother. This is a boneify tittle."

Contributor: W. R. Slinkard,
Memphis, Tenn.

An Old Offender Brought to Trial.—A prominent Iowa attorney writes: "Last week I was busy by appointment in defending murder by the Court."

Contributor: Peisen & Soper.
Eldora, Iowa.

Names Suitable to the Action.—Stryker v. Hastie is the title of an action for damages by collision of automobiles at a street intersection, reported in 131 Or. 282. Stryker was a woman who was hasty, and Hastie was a man who was striker.

Contributor: J. F. Boothe.
Portland, Ore.

An Old Old Story.

This is a story that, on the word of Supreme Court Justice Henry G. Wenzel, Jr. of Suffolk Special Term New York Supreme Court has an old plot:—"It takes years of experience for some men to make real fools of themselves."

One character in the story is Mr. B—a farmer of Manorville, who, nudging his three score years and ten, found himself alone upon his small farm. The other character is Mrs. S.

"It is not good for a man to be alone." And when he is alone on a farm in Manorville through the long stretches of the dreary winter nights, he reaches the utter depths of desolation," said the Justice. Came then the defendant, Mrs. S. looking for a position as housekeeper. It is conceded that at the time of her engagement the plaintiff promised that if she would cook for him and care for the house so long as he lived he would leave her all his worldly goods.

"At first all seemed well—so well indeed, that the plaintiff offered to marry the defendant and went so far as to purchase from Montgomery Ward & Co. a modern wedding band engraved with her initials and set with diamond chips. But, alas! the defendant then was obliged to disclose the fact that she had a husband living. So no wedding bells rang out."

There are several stirring passages in the narrative about the plaintiff writing wills in favor of the defendant, then the Justice writes:—

"But the defendant was not satisfied. The frost was on the pumpkin, and he looked ripe for picking. She had no intention of waiting until he died. In the salubrious air

of Long Island, he might live to be 80 or 90 and she was 50. So she insisted that he draw deeds for his farm and a few acres he owned at Hampton Bays in her favor.

". . . They went and had it done. . . . Anyone might finish this story. Thereafter he was a nuisance in the house which had been his. Remonstrations brought the suggestions that he go to the poor farm if he didn't like it. He was left alone . . . and so forth. His clothes went unwashed. He cooked his own meals and he washed his own clothes. He now asks that these deeds be set aside. . . . There is no doubt in the mind of the court that the plaintiff here has been 'taken in by the machinations of a scheming woman.'"

The Justice closes the story with a terse paragraph:—

"Judgment for the plaintiff."

Contributor: J. W. Bryan,
White Plains, N. Y.

Apt Instruction: The following instructions by the trial court in Harrison v. Western Union Telegraph Co. 75 S. C. 267, 55 S. E. 450, was described in the following very descriptive language, "I charge you if this act was done a-purpose, and done with such disregard of the rights of the plaintiff as to amount to wilfulness, then the jury has the right to apply the whip to the back of the defendant company in order to punish them."

Ten Bucks for a Trip to Gotham.—Since the decision of Hon. Will Leach is what may be termed a fait accompli and irrevocable and no more than $10 is to be allowed an attorney for a trip to New York to interview witnesses in absentia it may be permitted without the peril of swift and painful punishment, we hope, to observe that the honorable court may be doing a favor to the attorneys in the case whose urge requires them to make a trip to Gotham at this particular season of the year. The metropolis is irresistible within five days of the arrival of Santa Claus. Moreover, night clubs are not all virtuous places. The pitfalls of the big city, in fact, are real and many, yet ten bucks is, admittedly, meager. It will not permit an outlander to go far, especially when so much of the tenner will

be put into a round trip fare by train at $5.40 or a journey by bus at $4.50. Subway fares, though, are only a nickel for a ride the whole length of Manhattan, so that's a small item. If you know the haunts, the modest ones, it may be possible to get along, in fact it will be quite urgent, on ten dollars, to find those places where the table de hote is not in excess of 75 cents for lunch and possibly $1.25 for dinner. Taking the $5.40 rail fare plus the $2 for eats the hole in the ten-spot is deep but there is still $2.60 for buying pineapple juice for the witnesses and a few other incidentals, including clean collars. On second thought if the Road of Anthracite is used for travel the last item can be excluded. Phoebe Snow is not as young as she was but just as immaculate after a ride thereon. But why fidget over a balance of $2.60? Unless it were to tempt the traveler to take a fling in Wall Street. Suffice it to say the honorable court could never have had the thrill of scrutinizing the swindle sheet of a traveling salesman or of an enterprising journalist on an assignment to Gotham. Ten dollars! No reporter worthy the trade would think of breaking inviolate traditions with such modesty for even "miscellaneous" expense. The court's thrift sense, notwithstanding, will find no dissent so far as vox populi is concerned. It will be sure to bring the lawyers getting the ten back for Christmas at home.

Remember the needy. Unto the least of these, the little children, and the sick, the infirm and the aged, is the paramount duty of the strong, the healthful and the happy.
Submitted by J. P. Moran,
538 Spruce St., Scranton, Pa.

Rhymed Reports.*—Cushing vs. Rodman (U. S. C. C. A. Washington, D. C. No. 6465).

Comes now the appetizing case of Cushing vs. Rodman;
A dietetic litigation—certainly an odd one:
For Mr. Cushing bit into an innocent looking scone
And suddenly encountered a resistent cobble stone.
His delicate dental bridge work was not fortified to bear
The consequent resulting shock, and so he faced the chair
—Judicial notice recognizes obvious mental strain
To one who has a dental date (and also physical pain).
The facts were all admitted, so the point to be decided
Was whether one who sold a bun a warranty implied; Did
He have to X-ray every sinker, doughnut, roll and bun
And determine just what dirty work the baker might have done?
Or could he, if not negligent, with safety serve his guest
And be shed of obligation by the sorrow he expressed
When a customer encountered foreign matter in his menu
Such as pebbles,[1] pins,[2] or cyanide, or germs that gripe and pain you.[3]
The cases on the subject rather obfuscate our wits
The morbid oyster—caveat emptor—there's the phrase that fits[4]
But the case of ptomained mackerel is something else again
For the stomach ache resulting is an actionable pain.[5]
A separate line of cases with distinctions rather nice,
Concerns itself exclusively with unexpected mice.
A mouse saute' ed with kidneys means a lawsuit for the House[6]
But when served in Chinese food of course it's just another mouse.[7]
Good victuallers a warning from the instant case will take
Don't deal with jocular bakers who put marbles in the cake
Mince well your mice ere serving, their identity to hide,
And so avoid the danger of the warranty implied.

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[1] Friend vs. Childs Dining Hall Co., 231 Mass. 65, 120 N. E. 407.

[2] Ryan vs. Progressive Store, 255 N. Y. 388, 175 N. E. 105.

[3] See cases cited below.

[4] Sheffer vs. Willoughby, 163 Ill. 418, 45 N. E. 253; Nisky vs. Childs Co., 103 N. J. Law 464, 135 A. 805.

[5] Smith vs. Gerrish, 256 Mass. 183, 152 N. E. 318.

[6] Barrington vs. Hotel Astor, 184 App. Div. 317, 171 N. Y. Supp. 840.

[7] Kenny vs. Wong Len, 81 N. H. 427, 128 A. 343.

[*] Written by my friend G. Stanleigh Arnold of the San Francisco Bar.
Contributor: H. Stephens, Justice U. S. C. C. A., Washington, D. C.

Objection Sustained.—He was Justice of the Peace in a frontier district. He usually wore his hat during court procedure, with the hat pulled down over one eye, and smoked his pipe, and put his feet upon the table that served for a bench. A certain defendant was docketed to appear before him on a preliminary hearing, and the District Attorney had 'phoned the Justice saying that he (the DA) would not be able to attend the hearing, but asking the Justice to look after the State's interest. This greatly pleased the Justice to assume the additional duties of the DA. During the hearing, while the Justice sat with feet upon table, pipe in mouth, and hat pulled down over one eye, the defendant's counsel asked a witness a question which the Justice thought improper.

Suddenly he came to life, jumped to his feet, took pipe in one hand, hat in the other and waved his hat over his head and said: "I object. I object. In behalf of the State of Oregon, I object to counsel asking the witness any such question." Then he resumed his seat, put his pipe in his mouth, feet on the table, and hat pulled over one eye. Then he deliberated for a moment or two, and then calmly stated: "The objection is sustained."

Contributor: C. R. Wade,
Bandon, Oreg.

The Stenog's Error.—Recently a stenographer displayed fully her knowledge of cattle when she returned a transcribed instrument to her employer containing the following language: ". . . among other cattle, 120 head of heifer steers branded HB on the left shoulder. . . ." They were Hereford steers.

Contributor: The Stenog. Herself.

Absent Expert.—Neighbor to lawyer answering door bell: Do you have a bottle opener?

Lawyer: Yes but he has gone to college.

Told by Dan O'Keeffe at
South Dakota BAR Association.